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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/754,958	01/05/2001	Manfred Auer	4-30730B/D1	6787

1095 7590 12/02/2002

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EXAMINER

BAKER, MAURIE GARCIA

ART UNIT

PAPER NUMBER

1639

DATE MAILED: 12/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.



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09/754,958	01/05/2001	AUER	4-30730B/D1

EXAMINER	
Maurie Garcia Baker, Ph.D.	
ART UNIT	PAPER NUMBER
1639	9

DATE MAILED:

Please find below a communication from the EXAMINER in charge of this application
Commissioner of Patents

Please see attached Notice of Non-Responsive Amendment.

DETAILED ACTION

Please note: The number of Art Unit 1627 has been changed to 1639. Please direct all correspondence for this case to **Art Unit 1639**.

Notice of Non-Responsive Amendment

1. The amendment filed on September 9, 2002 canceling all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention for the following reasons.
2. The newly presented claims are drawn to compounds “comprising structures of the formulae II - III” where these formulae are defined as “A-B-D-C-D’ - (Formula (II))” and “A-B-D- and -D’-C (Formula (III))”. The claims were previously drawn to compounds “represented by formula (II – III)”, where the formulas were set forth as “A-B-D-C-D’-E (Formula (II))” and “A-B-D-E-D’-C (Formula (III))”. The previously claimed E moiety is **no longer present** in newly filed independent claim 12 and Formula (III) appears to be completely different in structure. As the new claims appear to represent ***different compounds***, this is deemed to be a different invention.
3. The different compounds would represent different inventions that would require completely different searches due to their different classification and/or divergent subject matter (due to differences in chemical structure) and there is no expectation that the

searches would be coextensive. Furthermore, art anticipating or rendering obvious each of the compounds, respectively, would not necessarily anticipate or render obvious another group, because they are drawn to different inventions that have different distinguishing features and/or characteristics.

4. The examiner recognizes that there does not appear to be originally filed claims that would represent the invention that now appears to be claimed; however, applicant is reminded of 37 CFR 1.142(b) and MPEP § 821.03. Since applicant has received an action on the merits for the *originally presented* invention, this invention has been constructively elected by original presentation for prosecution on the merits.

5. Since the above-mentioned amendment appears to be a *bona fide* attempt to reply, applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD UNDER 37 CFR 1.136(a) ARE AVAILABLE.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maurie Garcia Baker, Ph.D. whose telephone number is (703) 308-0065. The examiner can normally be reached on Monday-Thursday and alternate Fridays from 9:30 to 7:00.

7. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew J. Wang, can be reached at (703) 306-3217. The fax phone number for the organization where this application or proceeding is assigned is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0196.

Maurie Garcia Baker, Ph.D.
November 26, 2002

A handwritten signature in black ink, consisting of stylized initials 'MB' followed by a horizontal line.

MAURIE GARCIA BAKER, Ph.D.
PATENT EXAMINER